

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 173 Department of Juvenile Justice

SPONSOR(S): Criminal Justice Subcommittee; Pilon and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Williams	Cunningham
2) Judiciary Committee	16 Y, 0 N	Williams	Havlicak

SUMMARY ANALYSIS

During the 2011 Legislative Session, CS/SB 618 passed the legislature which repealed numerous provisions relating to serious or habitual juvenile offenders and serious or habitual offender programs (SHOPs). According to the Department of Juvenile Justice (DJJ), SHOPs had a long history of being underutilized, and the changes made by CS/SB 618 more accurately reflected the practices of DJJ.

The bill amends numerous sections of statute in chapters 984 and 985, F.S., to delete references to serious or habitual juvenile offenders and SHOPs. These changes conform the statutes to the repeals made by CS/SB 618.

In addition, the bill:

- Defines “mother-infant program” and authorizes DJJ to develop or contract for mother-infant programs; and
- Provides authority for DJJ, at the secretary’s discretion, to pay up to \$5,000 towards the basic funeral expenses for a youth who dies while in custody of DJJ and whose parents or guardians are indigent and unable to pay for such expenses.

The bill does not appear to have a fiscal impact and is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Serious or Habitual Juvenile Offenders and Programs

During the 2011 Legislative Session, CS/SB 618 passed the legislature¹ which repealed numerous provisions relating to serious or habitual juvenile offenders and serious or habitual offender programs (SHOPs). According to the Department of Juvenile Justice (DJJ), SHOPs had a long history of being underutilized, and the changes made by CS/SB 618 more accurately reflected the practices of DJJ.²

Effect of the Bill

The bill amends the following sections of statute to delete references to serious or habitual juvenile offenders and SHOPs:

- Section 984.03, F.S., (defining a SHOP);
- Section 985.14, F.S., (referring to assessment for placement in a SHOP);
- Section 985.441, F.S., (referring to juvenile placement in a SHOP);
- Section 985.0301, F.S., (referring to SHOPs);
- Section 985.601, F.S., (referring to SHOPs); and
- Section 985.688, F.S., (referring to SHOPs).

These changes conform the statutes to the repeals made by CS/SB 618.

The bill also amends ss. 985.045 and 985.721, F.S., to conform to the changes made by the bill.

Residential Commitment Programs

Section 985.441, F.S., authorizes a court that has jurisdiction of an adjudicated delinquent child to commit the child to DJJ at a restrictiveness level defined in s. 985.03, F.S.³ Once the court has ordered the youth to a specific restrictiveness level, it is the responsibility of DJJ to determine the most appropriate placement available within that restrictiveness level.⁴

Residential commitment programs are grouped into five custody classifications based on the assessed risk to public safety.⁵ These classifications are identified as restrictiveness levels and include: minimum-risk nonresidential, low-risk residential, moderate-risk residential, high-risk residential, and maximum-risk residential.⁶ Each restrictiveness level of placement represents increased restrictions on the youths' movement and freedom.⁷ Juvenile residential facilities range from wilderness and marine camps to halfway houses, youth development centers, sex-offender programs and maximum-security correctional facilities.⁸

Youths in residential commitment programs are committed to these programs for an indeterminate length of time and must receive educational and vocational services.⁹ They must also complete an individually-designed treatment plan that is based on their rehabilitative needs as one of the requirements for release.¹⁰

¹ Chapter 2011-70, L.O.F.

² Department of Juvenile Justice 2011 Agency Proposal (on file with the House Criminal Justice Subcommittee staff).

³ Section 985.441(1)(b), F.S.

⁴ Department of Juvenile Justice, Juvenile Justice Office of Residential Services. <http://www.djj.state.fl.us/Residential/index.html> (last visited on November 1, 2011).

⁵ Department of Juvenile Justice, Restrictiveness Levels. <http://www.djj.state.fl.us/Residential/restrictiveness.html> (last visited on November 1, 2011).

⁶ Section 985.03(45), F.S.

⁷ *Supra* note 5.

⁸ *Supra* note 4.

⁹ *Id.*

¹⁰ *Id.*

Juvenile Justice Continuum - Mother-Infant Program

Currently, section 985.601(3)(a), requires DJJ to develop or contract for various programs to provide rehabilitative treatment for juveniles adjudicated delinquent. These programs include, but are not limited to:

- Early intervention and prevention;
- Diversion;
- Community-based substance abuse treatment services;
- Community-based mental health treatment services;
- Community-based residential and nonresidential programs; and
- Environmental programs.¹¹

The statute does not require DJJ to develop or contract for mother-infant programs.

Currently, DJJ operates a 20-bed mother-infant residential commitment program called Women in Need of Greater Strength for Life (WINGS) in Miami-Dade County.¹² The program serves pregnant and postpartum females ages 14-19 with the objective of:

- Providing a structured and supervised transition from residential placement to the community; and
- Closely monitoring the youth to ensure public safety.¹³

Effect of the Bill

The bill amends s. 985.601(3)(a), F.S., to authorize DJJ to develop or contract for mother-infant programs.

The bill amends s. 985.03, F.S., to define a “mother-infant program” as a residential program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents, which is operated or contracted by DJJ. The bill requires mother-infant program facilities to be licensed as a child care facility under s. 402.308, F.S., and to provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of their infants. The bill also provides that an infant, upon agreement of the mother, may accompany the mother in the program.

Juvenile Funeral Expenses

On July 10, 2011, Eric Perez died while in the care of DJJ at a state detention facility in West Palm Beach.¹⁴ At the time, DJJ had an internal policy dating back to 2008, authorizing DJJ to pay up to \$5,000 in funeral expenses when a youth died in their custody and the parents or guardians were indigent and unable to pay such expenses.¹⁵ Citing this policy, DJJ sought to pay for a portion of Eric Perez’s funeral expenses. However, according to DJJ, the Department of Financial Services (DFS) would not process the payment based on DFS’s determination that there was no statutory authority which allowed DJJ to make such payment.¹⁶

According to DJJ, when a state agency is responsible for the safety and welfare of youth, under some circumstances, it may be beneficial to both community relations and in the context of potential litigation,

¹¹ Section 985.601(3)(a), F.S.

¹² Department of Juvenile Justice, WINGS for Life.

http://www.djj.state.fl.us/Residential/Facilities/south_facilities/WINGS_FOR_LIFE.html (last visited on November 1, 2011).

¹³ *Id.*

¹⁴ *Florida finance chief won’t pay for funeral of teen who died in lockup*. The Miami Herald. July 29, 2011.

<http://www.miamiherald.com/2011/07/29/2337038/florida-finance-chief-wont-pay.html#storylink=misearch> (last visited on November 1, 2011).

¹⁵ Phone conversation with Ana Maria Sanchez, Legislative Affairs Director, Department of Juvenile Justice. October 11, 2011. *See also*, DJJ Analysis HB 173, 2012. (On file with House Criminal Justice Subcommittee staff).

¹⁶ *Id.*

to offer financial assistance to indigent parents or guardians to assist with the burial expenses of a youth.¹⁷ Other states have authorized state agencies to pay for such expenses in similar instances.¹⁸

Effect of the Bill

The bill amends s. 985.601, F.S., to authorize DJJ, at the secretary's discretion, to pay up to \$5,000 toward the basic funeral expenses for a youth who dies while in the custody of DJJ and whose parents or guardians are indigent and for which no other funding is available.

B. SECTION DIRECTORY:

Section 1. Amends s. 984.03, F.S., relating to definitions.

Section 2. Amends s. 985.03, F.S., relating to definitions.

Section 3. Amends s. 985.14, F.S., relating to intake and case management system.

Section 4. Amends s. 985.441, F.S., relating to commitment.

Section 5. Amends s. 985.601, F.S., relating to administering the juvenile justice continuum.

Section 6. Amends s. 985.0301, F.S., relating to jurisdiction.

Section 7. Amends s. 985.045, F.S. relating to court records.

Section 8. Amends s. 985.688, F.S., relating to administering county and municipal delinquency programs and facilities.

Section 9. Amends s. 985.721, F.S., relating to escapes from secure detention or residential commitment facility.

Section 10. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill authorizes DJJ, at the secretary's discretion, to pay up to \$5,000 toward the basic funeral expenses for a youth who dies while in the custody of DJJ and whose parents or guardians are indigent and for which no other funding is available. According to DJJ, the department has an internal policy dating back to 2008, which authorizes payment of up to \$5,000 in funeral expenses when a youth dies in their custody and the parents or guardians are indigent and unable to pay such expenses. DJJ reports that the department has paid for such funeral expenses for over ten years, and provided records reflecting that since 2008, the department has paid \$5,000 in funeral

¹⁷ DJJ Analysis HB 173, 2012. (On file with House Criminal Justice Subcommittee staff).

¹⁸ The state of Tennessee's Department of Children's Services Administrative Policies and Procedures provides that the department will provide for a funeral and burial for a child who dies in custody if the parent/guardian or next of kin cannot be located or cannot afford to pay. *See*, State of Tennessee, Department of Children's Services Administrative Policies and Procedures: 20.29. www.tn.gov/youth/dcsguide/policies/chap20/20.29.pdf (last visited on November 1, 2011).

expenses in two instances.¹⁹ These expenditures were paid from general revenue funding.²⁰ DJJ reports that this bill will not have a fiscal impact.²¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 985.64, F.S., requires DJJ to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of ch. 985, F.S. The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends s. 985.03, F.S., to define a "mother-infant program" and to provide that mother-infant program facilities must be licensed as a child care facility under s. 402.308, F.S., and must provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of the infants. However, the bill does not set forth any additional requirements or criteria that a mother-infant program must satisfy. Without further legislative directive, the structure and components of mother-infant programs could vary greatly.

¹⁹ Phone conversation with Ana Maria Sanchez, Legislative Affairs Director, Department of Juvenile Justice. November 3, 2011. *See also*, DJJ's expense records for Wilson Funeral Home and Snow Funeral Home (On file with House Criminal Justice Subcommittee staff).

²⁰ *Id.*

²¹ DJJ Analysis HB 173, 2012. (On file with House Criminal Justice Subcommittee staff).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 1, 2011, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Corrects and deletes obsolete references to serious and habitual juvenile offender programs;
- Defines “mother-infant program” and authorizes DJJ to develop or contract for mother-infant programs; and
- Authorizes the Secretary to pay up to \$5,000 in funeral expenses when a juvenile dies in DJJ’s custody.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.